January 17, 2024

To: Securities and Exchange Commission

From: Committee for a Constructive Tomorrow

Re: Order Instituting Proceedings: "Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the NYSE Manual to Adopt Listing Standards for Natural Asset Companies"

File No.: SR-NYSE-2023-09

The Committee for a Constructive Tomorrow (CFACT), a 501(c)(3) nonprofit organization, is pleased to submit comments to the Securities and Exchange Commission (SEC) on a proposed rule change by the New York Stock Exchange (NYSE) creating Natural Asset Companies (NACs), which would be traded on the NYSE. The SEC is seeking comments on whether to approve or disapprove the proposed rule change. CFACT has grave concerns about this proposal, and they are explained below.

The SEC was created in the aftermath of the stock market crash of October 24, 1929. Two landmark statutes, the Securities Act of 1933 and the Securities Exchange Act of 1934, set the parameters of the SEC. At its inception, the new federal entity had a mission statement that is worth bearing in mind:

"The Securities and Exchange Commission oversees securities exchanges, securities brokers, investment advisors, and mutual funds in an effort to promote fair dealing, the disclosure of important market information, and to prevent fraud."

Under the proposed rule, the NYSE would add to its Listed Company Manual the listing of common equity securities of National Asset Companies, or NACs. According to the proposed rule, this would be "a corporation whose primary purpose would be to actively manage, maintain, restore (as applicable), and grow the values of natural assets and their production of ecosystem services." Notably, the proposed rule characterizes "the distinct purpose of a NAC" as "protect[ing] and grow[ing] the natural assets under its management." The proposed rule also specifically defines the term "Natural Asset Companies (NACs)" as "[c]orporations that hold the rights to the ecological performance of a defined area and have the authority to manage the areas for conservation, restoration, or sustainable management."

Origins Rooted in Cronyism

NACs as a concept owe their existence to Intrinsic Exchange Group Inc. (IEG). According to a September 2021 press release by the Rockefeller Foundation, "IEG was founded in 2017 entrepreneur and environmentalist, Douglas Eger. IEG received critical funding from IDB Lab, Inter-American Development Bank, The Rockefeller Foundation, and Aberdare Ventures and Intrinsic Entertaining Ideas." It is worth noting that The Rockefeller Foundation alone donated $750,000 to IEG in 2019 and $1 million to IEG in 2021, according to comments on the proposed rule already submitted to the SEC.

The Rockefeller Foundation's press release indicates that NACs are a joint project of the NYSE and IEG. The release quotes Eger as follows:

"This new asset class on the NYSE will create a virtuous cycle of investment in nature that will help finance sustainable development for communities, companies, and countries[.] … **Together, IEG and the NYSE** will enable investors to access nature's store of wealth and transform our industrial our industrial economy into one that is more equitable." (emphasis added)

The release goes on to quote NYSE's then-president Stacy Cunningham as follows:

"With the introduction of Natural Asset Companies, the NYSE will provide investors with an innovative mechanism to financially support the sustainability initiatives they deem critical to our future. **Our partnership with Intrinsic Exchange Group** is another example of the NYSE tapping into our community to drive meaningful progress on ESG [environmental, social, and governance) issues with a solutions-based approach[.]" (emphasis added)

In addition to the open acknowledgement of cozy relationships between the NYSE and other entities supporting the creation of NACs, key terms or phrases like "community," "communities," "equitable," "our future," "virtuous," "sustainable," "sustainability," "sustainable development," and transform" are conspicuously left undefined in in both the Rockefeller Foundation press release and in the proposed rule. Furthermore, the release admits that "the value created by NACS is not fully captured by traditional economic metrics." This is another way of saying that NACs will not and cannot make a profit. NACs will invest in "nature" where the only value created is the purported protection of nature.

In other words, NACs would not be investment vehicles into which ordinary Americans can put their money with a reasonable expectation of receiving a good return. Instead, they would be state-sanctioned instruments of environmental policy as favored by narrow, if powerful, elites ensconced in wealthy foundations, the United Nations, and the NYSE, and corporations well-positioned bureaucrats in federal agencies

Nowhere is this more obvious than in the role NACs would play in serving as a funding mechanism the Bureau of Land Management's (BLM's) recent proposed rule, "Conservation and Landscape Health," which would authorize BLM to grant "conservation leases" on public lands. BLM assures the public that such leases would be "for the purpose of ensuring ecosystem resilience through protecting, managing, or restoring natural environments, cultural or historic resources, and ecological communities, including species and their habitats." The proposed BLM rule provides that "once the BLM has issued a conservation lease, the BLM *shall not authorize any other uses of the leased lands* that are inconsistent with the authorized conservation use." (emphasis added)

This means that once BLM issues a conservation lease, productive economic uses such as grazing, logging, or mining will no longer be allowed unless they are deemed "consistent" with the lease's environmental purposes.

In short, the NYSE's rule is an effort to circumvent federal laws governing how public lands are to be managed, not least the 1976 Federal Land Policy and Management Act (FLMPA). FLPMA mandates that BLM manage public lands "on the basis of multiple use and sustained yield." This means that BLM must provide for a "combination of balanced and diverse uses," of which the "principle or major uses" include, "and are limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production." Nothing in FLMPA authorizes the granting of "conservation leases," and the BLM rule's restrictions on productive

economic uses of lands under such a lease put it at odds of congressional intent as clearly laid out in FLPMA.

By violating the clear language of FLPMA, the proposed BLM rule is illegal, and is destined to be overturned by the courts. Yet its provision creating "conservation leases" is inextricably linked to the NACs rule currently before the SEC. Such leases will not provide financial returns to the leaseholders. On the contrary, they are specifically designed to lock up lands to prohibit any economic use thereof. So which entities would sink money into the unprofitable leases?

The answer is NACs. Like conservation leases, NACs are not designed to make money. NACs are strictly limited in their ability to conduct "revenue-generating" operations, and can only do so if those operations are "consistent with" the NAC's "primary purpose" under which the operation will "will not cause any material adverse impact on the natural assets" under the NAC's control.

"Not in Accordance with Law"

As the Attorney Generals from 25 states noted in comments submitted to the SEC on January 9, 2024:

"The BLM rule authorizes BLM to issue leases that limit public lands to no use or to extremely limited uses. The NYSE's proposed rule change in turn provides the mechanism by which companies can obtain the funding necessary to pay for those money-losing leases. In this way, the proposed rule is part of an interlocking scheme designed to facilitate another agency's violation of the law – namely, BLM's issuance of illegal 'conservation leases.' Facilitating another agency's violations is a textbook example of *ultra vires* agency action 'not in accordance with law.'"

Furthermore, FLPMA does not define conservation as a principle or major use of public lands. The NAC rule cannot categorically dismiss these clear multiple-use and sustained yield FLPMA directives. The NAC rule unlawfully proposes to substitute non-use for multiple use on public lands. Under the proposed NAC listing rules before the SEC, NACs would be prohibited from permitting mining, logging, fossil-fuel development, and industrial-scale agriculture on NAC-held lands because these because these activities are explicitly and categorically defined as "unsustainable."

Given the shaky legal ground on which the NYSE proposed NACs rule stands, it has little chance of surviving what promises to be a multitude of court challenges. Additionally, the economic and social harm to everyday Americans the scheme's plan to lock up so much of the nation's natural resources in perpetuity is incalculable. For these reasons, CFACT urges the SEC to reject the proposed NAC rule *in toto*. Only in this way can the SEC remain true to its mission statement cited above.

Thank you very much.

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Washington, D.C.

https://attorneygeneral.utah.gov/wp-content/uploads/2024/01/2024-01-09-Comment-Letter-to-SEC-re-File-No.-SR-NYSE-2023-09.pdf